

# Employment Law Update – 2018 Rhode Island and Massachusetts

# Rhode Island Legislative Developments

# **1. Rhode Island Healthy And Safe Families And Workplaces Act**

- Effective July 1, 2018.
- Rhode Island becomes 8<sup>th</sup> state to enact paid sick leave legislation (Arizona, California, Connecticut, Massachusetts, Oregon, Vermont, Maryland).

## Key Features:

- Applies to employers with 18 or more employees in Rhode Island.
- Employees may use leave for themselves, for a “family member,” for a care recipient, or for a member of employee’s household.
- Permitted reasons: Mental or physical health problem; domestic violence; stalking; closure of business or school; health authority deems person has communicable disease.

## Key Features, cont'd

- Hourly employees accrue one leave hour for every 35 hours worked.
- Exempt employees earn leave based on 40-hour work week (or less).
- Caps on annual use and accrued, unused leave:
  - 2018 . . . . . 24 hours.
  - 2019 . . . . . 32 hours.
  - 2020+ . . . . . 40 hours.
- Accrued, unused leave must be carried over to next year (no “use or lose”)
  - But cashing out of unused leave when employment ends is not required.
- Leave is paid at same hourly rate and with same benefits.

## 2. Minimum Hourly Wage

- Increasing from \$10.10 to \$10.50 effective January 1, 2019.

## Significant/Interesting Cases

## Hortencia Zabala v. City of Providence

- Rhode Island Superior Court, April 3, 2018 (Gallo, J.).
- Plaintiff, a native of Bolivia, taught math in the Providence Public Schools.
- Students complained they could not understand her because of heavy accent. They would “talk, text, and doodle during class.” “How much the point?”
- School Department denied request for paid sabbatical at PC to study English.
- Plaintiff pointed to white, native English speaker who was granted paid sabbatical to study Spanish in Argentina.
- Human Rights Commission found unlawful discrimination based on ancestral origin.
- Decision vacated by Superior Court. Held, no discrimination.



## Jardin v. Coxcom

- Rhode Island Federal Court, July 30, 2018 (McConnell, J.).
- Supervisor twice called plaintiff, age 53, a “weird old man.” Plaintiff complained; supervisor apologized.
- Five months later, plaintiff dumped trash on customer property and was fired.
- Held: No age discrimination (summary judgment). Because “weird old man” comments made five months before termination, they “lack . . . linkage to the adverse employment decision [and] are insufficient to provide discriminatory animus.”

# Massachusetts Legislative Developments

## Noncompetition Agreement Act

- Applies to non-competition agreements executed on or after October 1, 2018.

### Key Features:

- Law includes new consideration requirements that will make non-competes more costly for employers: “garden leave” or “mutually agreed upon.”
- Restricted period cannot exceed one (1) year from employee’s separation from employment.
- Non-competes not enforceable against certain categories of employees (non-exempt; students; younger than 19).

## Key Features, cont'd

- Non-competes not enforceable against employees terminated without cause or laid off.
- New law does not affect non-solicitation or confidentiality agreements.
- Applies to employees who live or work in Massachusetts “for at least 30 days immediately preceding his or her cessation of employment.”

## Gender Pay Equity Act

- Effective July 1, 2018.

### Key Features:

- Requires that male and female workers be paid the same for “comparable” work. (Expands protections of Federal Equal Pay Act and M.G.L. c. 151B, which already require same pay for “same” job.)
- Enumerates factors which may justify variations in wages:
  - seniority system.
  - merit system.
  - quantity or quality of production or revenue.
  - geographic location of job.
  - education, training or experience if related to job.
- Limits use of salary history in hiring process
  - pre-offer, employers may not seek applicant’s salary history from applicant or their current or former employer.
- Forbids “pay secrecy” policies.

## Paid Family And Medical Leave Act

- Signed into law June 28, 2018.
- Starting 2021, most Massachusetts employees will be entitled to 12 weeks of paid leave to care for family member or bond with new child, and up to 20 weeks for own serious medical condition.
- Very generous, very expensive. Benefits will be funded by new payroll tax (.63%) starting July 1, 2019.
- Law creates new Department of Family and Medical Leave. Regulations published by March 31, 2019.
- Employers must post notice of new benefits by July 1, 2019.
- Minimum hourly wage rising from \$11.00/hr. to \$12.00/hr. on January 1, 2019.
- Rising to \$15.00/hr. by January 1, 2023.
- Mandates annual sales tax holiday weekend every August.

## Significant/Interesting Cases

## **Gessy Toussaint v. Brigham & Women's Hospital**

- Suffolk Superior Court, May 24, 2018 (jury trial).
- Haitian-American nurse reported that white doctor verbally abused another Haitian-American nurse over handling of disruptive patient.
- Claims: Retaliation and discrimination.
- Verdict: \$28 million on retaliation claim.



## Rivera-Rivera v. Medina & Medina, Inc.

- First Circuit Court of Appeals, August 1, 2018 (Thompson, J.).
- Plaintiff claimed she was harassed at work because of age and gender.
- Filed charge of discrimination with P.R. authority, causing harassment to increase, at which point she sued.
- District Court granted summary judgment for employer because plaintiff failed to allege “context, specific dates, and precise words used.”
- Court of Appeals reversed.
- Held, sufficient for plaintiff to describe the “type of harassment” she endured; we “decline to mandate the keeping of a diary in anticipation of litigation.”

# Presenters

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